IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

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JUDGMENT

M/s. Bhanwarlal Mufatlal & another.
vs.
Manohar Lal.

S.B.CIVIL SECOND APPEAL NO.79/2006 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 29.11.2005 PASSED BY SHRI VIRENDRA KUMAR MATHUR, ADDITIONAL DISTRICT JUDGE, BARMER IN CIVIL APPEAL DECREE NO.2/2005.

DATE OF JUDGMENT ::: 4.1.2007

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. MD Boob, for the appellants.
Mr. RK Thanvi, for the respondent.

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BY THE COURT:

Since the facts are very peculiar, therefore, this appeal itself is heard and decided by this order.

The appellants/defendants have challenged the

judgments and decrees dated 15.2.2005 and 29.11.2005 passed by the learned trial court and learned appellate court respectively.

The appeal was admitted on 22.5.2006 on finding following substantial questions of law being involved in this appeal :-

(1) Whether the two courts below ignored the material evidence from the statement of the plaintiff where the plaintiff admitted that earlier also, he filed the suit for eviction of the tenant (another) on the ground of personal bonafide necessity and got the possession of the house but did not occupy the house ?

(2) Whether the two courts below committed error of law in drawing inference that the plaintiff by evidence proved his bonafides for the alleged need despite the fact that the plaintiff admitted that he is settled at Mumbai along with his family and projected his need only for the purpose that his children has grown up and for their marriages, he needs house in dispute ?

(3) Whether the courts below committed error of law in taking the suit of the plaintiff under Section 13(1)(k) of Rajasthan Premises (Control of Rent and Eviction) Act, 1950 because of the reason

that no material facts were pleaded by the plaintiff constituting the cause of action for decree of eviction on this point ?

After admitting the appeal, the execution of decree under challenge was stayed by this Court.

Learned counsel for the respondent/landlord submitted that the suit was filed by the plaintiff/respondent for eviction of his tenant/ appellant on the ground of tenant committing default in payment of rent, non-user of the godown for more than 3 years, for creating nuisance by the tenant for personal bonafide necessity of the plaintiff and since the godown is in dilapidated condition and is unsafe for human habitation. The trial court while deciding the issue no.1 held that the building is in dilapidated condition and may fall any time and that may cause danger to public also. The trial court also held that the defendant failed to use the premises for the purpose for which it was let out to the defendant for the last three years. The trial court decided that the tenant has created nuisance and, therefore, the plaintiff is entitled to decree for defendant's eviction. Apart from above, the trial court held that the plaintiff proved his personal bonafide necessity and in case, decree for eviction against the tenant is

not passed, the plaintiff will suffer great hardship and there is no possibility of satisfaction of the plaintiff's need by giving part of the premises and, therefore, partial eviction is not possible. The trial court also held that the defendant committed default of payment of rent for more than six months prior to filing of the suit by the plaintiff. The defence of the defendant was strike off on 5.1.2004 as the tenant failed to deposit the rent during pendency of the suit and because of the mandatory provision of law, he lost his all defence against passing of the decree on the ground of default.

Learned counsel for the respondent pointed out from the memo of appeal submitted by the appellants before the first appellate court that before the first appellate court, the tenant only challenged the finding of the trial court given on question of personal bonafide necessity and there is some mention of other grounds but not very specifically, however, the defendant has not challenged the trial court's finding on the question of default and also did not challenge the order of trial court striking off the defence of the tenant. It is also submitted that in this appeal, substantial questions of law were framed in relation to personal bonafide necessity of the plaintiff and only in relation to the ground of Section 13(1)(k) of Rajasthan Premises (Control of Rent and Eviction) Act,

1950 (for short “the Act of 1950”), which is ground for eviction of tenant in case, the landlord requires building in order to carry out any building work as provided in sub-clauses (i), (i) and (iii) of Section 13(1)(k). It is also submitted that without admitting any of the claim of the appellants, even if all the substantial questions of law framed by this Court while admitting the appeal are decided in favour of the appellants, even then the decree of eviction cannot be set aside in view of the fact that the appellants themselves did not choose to challenge the grounds for appellants' eviction given by the trial court. It is also submitted that since the appellants did not prefer first appeal against the finding of the trial court on other issues, therefore, any plea of the appellants against the findings of the trial court on other issues cannot be looked into in second appeal.

Learned counsel for the appellants tried to submit that the appellants challenged all the findings of the trial court before the first appellate court and if the first appellate court has not considered and has not decided the pleas taken by the appellants before the first appellate court, then the appellate court's judgment and decree deserve to be set aside. It is also submitted that so far as personal bonafide necessity is concerned, for that, there was fact available on the

record that the plaintiff filed suit for eviction of the tenant on earlier occasion also and got possession of the house and did not occupy the house and then the plaintiff is proved to settle at Mumbai and, therefore, the need projected by the plaintiff is false. It is submitted that there is no pleading for eviction of the tenant constituting cause of action under Section 13(1)(k) of the Act of 1950.

I have considered the submissions of learned counsel for the parties and perused the reasons given by the two courts below.

The peculiar facts of the case are that the appellant/tenant suffered finding against him on all issues each of which constitute a separate cause of action for eviction of the tenant. Unless all the grounds for eviction are set aside by the appellate court, the appellant/tenant cannot get the reversal of decree of his eviction. Undisputedly, before the first appellate court, the ground raised by the appellants was with respect to challenge to the finding of the trial court on question of personal bonafide necessity alone which is apparent from the judgment of the first appellate court.

Learned counsel for the appellant tried to submit

that the grounds were raised by the appellants in the memo of appeal before the first appellate court and the appellate court, if not decided the grounds raised by the appellants, then that is ground for setting aside of the judgment and decree of the first appellate court.

This argument is legally not sustainable in view of the fact that the appellants should have raised the ground before the first appellate court that the appellant raised the grounds and those have not been considered by the first appellate court. Admittedly, no such application was filed by the appellants. Not only this, the appellants in second appeal have also not submitted that they contested on all other issues before the first appellate court and challenged the finding of the trial court on all issues nor the appellant has mentioned that his arguments were not considered by the first appellate court nor he proposed any substantial questions of law on this ground.

In view of the above reasons, any decision given on substantial questions no.1, 2 and 3, then that will be only for academic purpose and even all the questions of law are decided in favour of the appellants, the decree for eviction of tenant will stand on all other grounds on which the trial court passed the decree.

In view of the above, this second appeal deserves to be dismissed.

At this stage, learned counsel for the appellants prayed that three years' time may be granted to the appellants to vacate the suit premises.

Learned counsel for the respondent has serious objection. Learned counsel for the respondent submits that the suit premises is godown and, therefore, in case, this Court finds that some time may be granted to the appellants, six months' time only may be granted.

I considered this prayer of learned counsel for the appellants. Since it is a godown and not a shop nor it is a residential accommodation, therefore, this Court is of the view that the appellant be granted time upto 31.12.2007 to vacate the suit premises.

Therefore, it is ordered that in case, the appellants furnish a written undertaking before the trial court within a period of two months from today that they shall hand over the vacant possession to the landlord by or before 31.12.2007 and shall not part with the possession or sublet the suit premises during this period and shall pay all the arrears of rent and decreetal amount, if due, and cost of suit and cost of first appeal within a period of two months from today before the trial court or directly to the landlord, the

decree under challenge shall not be executed till 1.1.2008. The appellants shall also deposit the rent month by month by 15th day of each succeeding month of their tenancy in the trial court or pay directly to the landlord.

In case of non-compliance of the order or default in payment of rent mentioned above, the decree shall become executable forthwith.

With the aforesaid concession, this appeal is dismissed. The stay order dated 22.5.2006 granted by this Court is hereby vacated.

(PRAKASH TATIA), J.

S.Phophaliya